Pocatello
A MUNICIPAL CORPORATION OF IDAHO

Planning & Development Services

• ECONOMIC DEVELOPMENT
• PLANNING & ZONING
• NEIGHBORHOOD & COMMUNITY SERVICES
• POCATELLO REGIONAL AIRPORT

911 NORTH 7TH AVENUE | P.O. BOX 4169 POCATELLO, IDAHO 83205-4169 WEB: WWW.POCATELLO.US/PDS/INDEX.HTM

HEARING EXAMINER
AGENDA
Thursday, July 28, 2016
5:30 p.m.
City Council Chambers
911 N. Seventh Avenue
Pocatello, ID

City Hall is accessible to persons with disabilities. Program access accommodations may be provided with three (3) days' advance notice by contacting Dave Hunt at dhunt@pocatello.us; 208.234.6248 or 5815 South 5th Avenue, Pocatello, ID.

HEARING EXAMINER: Susan Lorenz

1. Disclosure of ex parte communication and site visit. Disclose who was talked to, the basic substance of the conversation and whether the conversation had any influence. Disclose if a site visit was done, location(s) of the visit and what was seen.

2. Bill Isley of BBAD Investments, LLC requests a variance to construct four single family homes to be 15 feet from the front property line on Lots 25, 26, 27 and 28, Block 1, Hidden Valley Subdivision, 3rd Addition. Municipal Code 17.03.240 requires a 20 foot front setback for the house and 25 feet for the garage. The properties are located within a Residential Medium Density Single Family zoning district.

AGENDA ITEM NO. 2

HEARING EXAMINER
Staff Report

APPLICANT/REPRESENTATIVE:	BBAD Investments, LLC/Billy B. Isley
MAILING ADDRESS:	2227 E. Center Street, Pocatello, ID 83201
LOCATION OF REQUEST:	2784, 2790, 2794 and 2800 Via Valdarno
LEGAL DESCRIPTION:	Lots 25, 26, 27, and 28, Block 1, Hidden Valley Subdivision, 3rd Addition
ASSIGNED STAFF:	Terri Neu, Assistant Planner
HEARING DATE:	July 28, 2016

DESCRIPTION OF REQUEST

Bill Isley of BBAD Investments, LLC requests a variance to allow single family homes to be constructed 15 feet from the front property line on Lots 25, 26, 27 and 28, Block 1, Hidden Valley Subdivision, 3rd Addition. Municipal Code 17.03.240 requires a 20 foot front setback for the house and 25 feet for the garage. The property is located within a Residential Medium Density Single Family zoning district.

BACKGROUND

The lots range from approximately 5,700 to 7,000 square feet. All setbacks will be met except for the front setback for the home. The rear property line is partially up the steep hill.

The properties to the south and east are zoned Residential Estate. The properties to the north and west are zoned Residential Medium Density Single Family and Residential Low Density.

STAFF RECOMMENDATION

Based upon staff review and analysis of the application material, subject site and surrounding area, and applicable Municipal Code sections, Planning Division staff finds that this proposal meets all of the required standards for a variance which is a requirement under Municipal Code 17.02.170(H). Therefore, Planning Division staff recommends **approval** of the request with the following conditions.

1. All right-of-way improvement installation and/or repair, such as but not limited to, curb, gutter, sidewalk, planter strip, street patch back, shall be made as determined necessary by and in accordance with City Engineering Department standards.
2. All City standards not specifically exempted or varied by the Hearing Examiner shall be adhered to.

A public hearing is to be held regarding the request and staff's recommendation is made in advance of this hearing and prior to any public input at the hearing. Therefore, the decision of the Hearing Examiner may differ as deemed appropriate.

MUNICIPAL CODE PROVISIONS

A variance is subject to Municipal Code 17.02.170. Municipal Code Section 17.02.170(A) defines variances as: "A variance is a modification of the bulk and placement requirements of this ordinance as to lot size, lot coverage, lot width, lot depth; front yard, side yard rear yard setbacks; parking space requirements, height of buildings, or other ordinance provisions adversely affecting the development or use of property. A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon a showing of undue hardship because of the characteristics of the site and that the variance is not in conflict with the public interest."

Municipal Code Section 17.03.240 Development Standards in Residential Medium Density Single Family Districts requires a front setback of 20 feet for the residence and 25 feet for the garage.

PUBLIC NOTICE

Notice of this application was mailed to adjoining property owners on July 12, 2016 and signage was posted on the subject property. This report was completed on July 21, 2016 and as of this date no public comments either for or against have been received. Any letters or comments received after the completion of this report will be presented at the scheduled hearing.

VARIANCE ANALYSIS

Municipal Code 17.02.170(E), "Authority to Grant: The hearing examiner may approve, approve with conditions, or modification, or deny an application for a variance. The decision may be appealed by the applicant or other affected persons according to the provision of Idaho Code Section 67-6521. Said appeal is to the City Council pursuant to the process outlined in Section 17.02.400, 'Appeals', of this Chapter."

Municipal Code 17.02.170(F), Criteria for Review: The hearing examiner shall review the facts and circumstances of each proposal and render a decision based on written findings of fact that address all of the following criteria:

A. The applicant shall have taken all reasonable steps to comply with the strict terms of the ordinance from which he or she requests the variance.

Applicant's response: Applicant states that they had the site topography surveyed and attempted to locate the four homes in a standard way. It is possible but requires substantial cutting into a steep hill. They have reduced the depth of their plan from 36 feet to 27 feet to help with the layout.

Staff analysis: The applicant is able to build the homes without the requested variance. However, in order to do so, they will have to cut into the hillside and build several retaining walls for each home. In granting the variance, less of the hillside will be used and only one retaining wall per home will be needed.

B. The variance sought must be the result of unusual physical characteristics of the site in question.

Applicant's response: The unusual condition is the steep hill which comes down over the back of 50%+ of the lots.

Staff analysis: The lots are at the bottom of a steep hill. In order to have "buildable" areas for the homes, the hillside will need to be cut into.

C. The circumstances surrounding the variance request shall be due to an undue hardship as related to the characteristics of the land and the applicant shall show that, absent a variance he/she would be deprived of rights commonly enjoyed by other properties in the identical zoning district.

Applicant's response: The undue hardship is not being able to construct single family residences on the four lots.

Staff analysis: The hardship in this case is due to the steep hillside that is located on the back portion of each of the lots.

D. The undue hardship cited as the basis of a variance request did not result from the actions of the applicant, or the current or prior landowner or any of their agents.

Applicant's response: The applicant states that the undue hardship is a natural hillside that has not been moved or disturbed by them or their predecessors.

Staff analysis: The hardship is the steep hillside at the back portion of the lots. It is not a result of the applicants' actions.

E. The applicant shall demonstrate that the proposed variance does not adversely affect adjacent/nearby property.

Applicant's response: The variance does not adversely impact adjacent property owners. It does not increase density. The driveway lengths and widths are the same as any lot with standard setbacks and longer. The footprint of the homes is smaller than adjacent homes and will result in more yard area and greater distance between the homes creating a more spacious setting. Minimizing the cuts into the hill will positively impact adjacent properties in the neighborhood.

Staff analysis: The proposed variance does not adversely affect nearby property.

F. Granting the variance will not be detrimental to the public health, safety, or general welfare.

Applicant's response: It will not affect health, safety or welfare of the public. The driveways will not be shortened. There is not an increase in density.

Staff analysis: Granting the variance for a reduced front setback for the homes will not be detrimental to the public health, safety, or general welfare. The garage will have the setback required by Municipal Code.

Municipal Code 17.02.170(G), Precedents: The granting of a prior variance or referencing property developed under prior regulations is not admissible evidence for the granting of a new variance. Each request for a variance shall be judged on its own facts and circumstances.

Municipal Code 17.02.170(H), Burden of Proof: The burden of proof that the proposed variance complies with all of the variance criteria as described under Section F above is the responsibility of the applicant. The applicant must support their case with substantial and competent evidence.

CONCLUSION
Staff finds the applicant has shown the burden of proof based on the characteristics of the site in question. Therefore, staff is recommending approval.

Attachments: A – Application
B – Overhead view of the property

PLANNING & DEVELOPMENT SERVICES
PO Box 4169, 911 North Seventh Avenue
Pocatello, Idaho 83205
(208)234-6184 FAX (208)234-6586

Attachment A

VARIANCE APPLICATION

Submittal Date: 6/30/16
Contact Person: TN
Meeting Date: 7-28-16

Permit #: 16-1503
Receipt #: 141540
Receipt Date: 7-6-16

Dates for public hearing will not be scheduled until application is deemed complete.

Filing Fee: $400.00 + 7 address labels x $3.00 = $ 21 for a **Total Due $** 421 xx/

Applicant Information:
Happy 5, llc & BBAD Investments llc
Name/Firm
2227 E Center
Mailing address
208-243-4441
Phone (work/cell/home)
TTisley@gmail.com

Representative Information:
Billy B Isley
Name/Firm
2227 E Center
Mailing address
208-243-4441
Phone (work/cell/home)

Project Information:

Zoning District: RMS

Street Address: 2784/2790/2794/2800 Via Valdarno Zip: 83201

Legal Description (attach documentation—see C, below): Lots 25/26/27/28 Blk 1 Hidden Valley Subdivision 3rd Addition

Brief Description of Proposed Variance: To allow one corner of each house to be setback 15' vs 20' under ordinance & 18' with minor variance. Therefore, we are asking this variance for the additional 3' a total of 10 sq.ft for each house.
Of Note: 1) driveways lengths exceed the 25' length for full setback.
2) There is A 1.5' misstep on ROW

THE FOLLOWING INFORMATION MUST ACCOMPANY EACH APPLICATION TO BE COMPLETE

A. All necessary filing fees must be paid and other required plans and information in support of the application.

B. **Two sets of typed**, gummed mailing labels with the names and addresses of all property owners which share a common boundary line, minus public right-of-way, with the subject property. A charge of $3.00 per property owner address is required in addition to the application fee. A signed Affidavit of Mailing List must also be submitted (attached).

C. The complete and accurate legal description for the subject property (recorded deed, title report or other legal documentation of ownership) shall be submitted.

D. Two (2) site plans, one (1) measuring 8-1/2" x 11" and one (1) 18" x 24" (or larger), which describes the proposal and contains the following information:

1. Drawn to scale.
2. Location of buildings, landscaping, setbacks, parking areas, existing and proposed fencing.
3. Location of adjoining streets (including any public improvements), alleys, driveways, and property lines.

E. PURSUANT TO MUNICIPAL CODE 17.02.170 VARIANCES, ALL OF THE FOLLOWING CRITERIA FOR REVIEW **MUST** BE ADDRESSED IN A WRITTEN NARRATIVE:

1. The applicant shall have taken all reasonable steps to comply with the strict terms of the ordinance from which he or she requests the variance.
2. The variance sought must be the result of unusual physical characteristics of the site in question.
3. The circumstances surrounding the variance request shall be due to an undue hardship as related to the characteristics of the land and the applicant shall show that, absent a variance he/she would be deprived of rights commonly enjoyed by other properties in the identical zoning district.
4. The undue hardship cited as the basis of a variance request did not result from the actions of the applicant, or the current or a prior landowner or any of their agents.
5. The applicant shall demonstrate that the proposed variance does not adversely affect adjacent/nearby property.
6. Granting the variance will not be detrimental to the public health, safety, or general welfare.

F. Precedents. The granting of a prior variance or referencing property developed under prior regulations is not admissible evidence for the granting of a new variance. Each request for a variance shall be judged on its own facts and circumstances.

G. If a representative will be submitting the application, an affidavit, power of attorney, or other document evidencing the right of the representative to appear and submit items on behalf of the property owner is required.

H. Burden of Proof: The burden of proof that the proposed variance complies with all of the variance criteria as described above is the responsibility of the applicant. The applicant must support their case with substantial and competent evidence.

A variance must be established within one (1) year of the granting of the variance. Actual construction of the permitted building shall constitute such establishment. This period may be extended by the staff for an additional six (6) months upon request submitted at least thirty (30) days prior to its expiration (Municipal Code Section 17.02.170(J)).

The approval of this application does not permit the violation of any federal or state codes, any section of the Building Code, or other Pocatello Municipal Codes as adopted. Approval of this land use permit does not exempt applicant from the provisions of the Federal Fair Housing Act or ADA requirements. Further, other conditions, requirements, etc. may be imposed as part of the building permit process.

I hereby acknowledge that I have read this application and state that the above information, including all submitted materials, is correct and I agree to the above terms and conditions. I further agree to abide by any and all conditions the Hearing Examiner and/or City Council may impose on my use of this property. I also understand that non-conformance with these conditions in a timely manner will result in automatic forfeiture of my permit. I am also aware that the applicant or a representative must be present at the public hearing and that the decision on this request will be recorded in the official records of Bannock County.

By signing this application, I hereby consent to allow the City to place a sign giving public notice regarding this application on the subject property during the course of these proceedings.

Signature of Applicant: _____ Date: 6/27/2016

Signature of Representative: _____ Date: 6/27/2016

1. We have had the site topographically surveyed and attempted to locate the 4 homes in a standard way. It is possible but requires substantial cutting into a steep hill.
A. We have reduced the depth of our plan from 36' to 24' to help with layout.

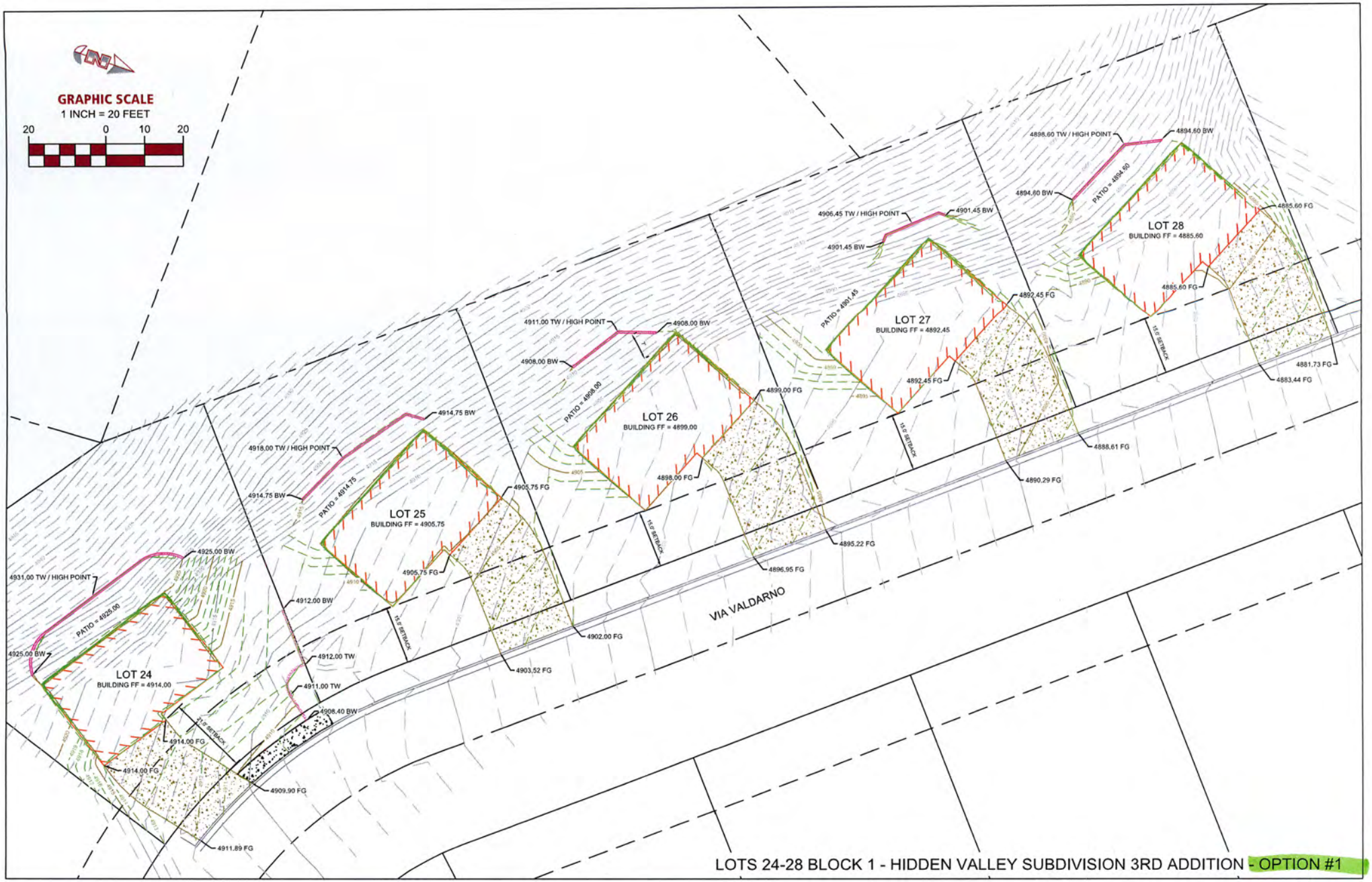
2. The unusual condition is the steep hill which comes down over the back 50%+ of the lots.

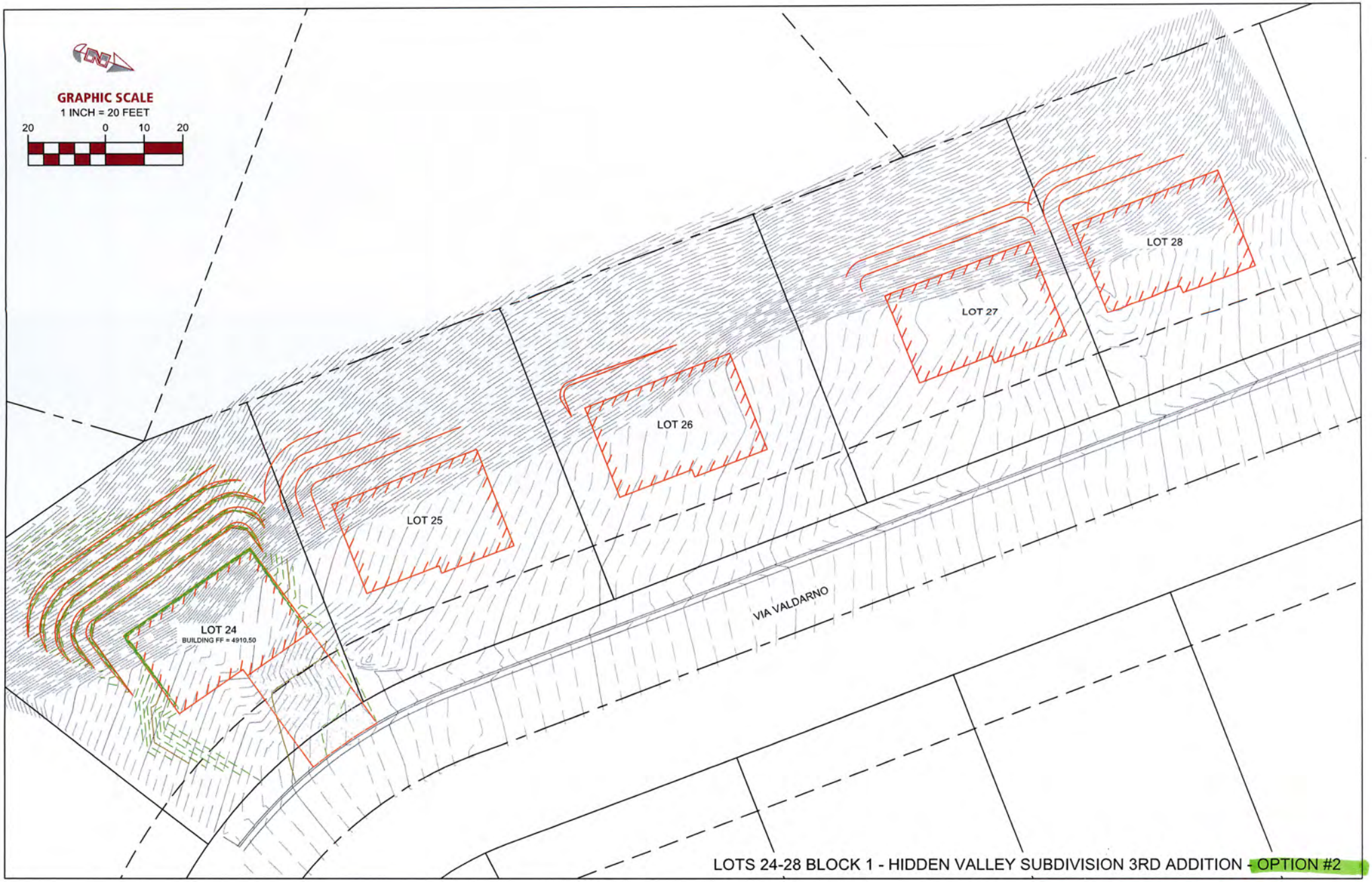
3. The undue hardship is not being able to construct SFR on the 4 lots.

4. It is a natural hillside that has not been moved or disturbed by us or our predecessors.

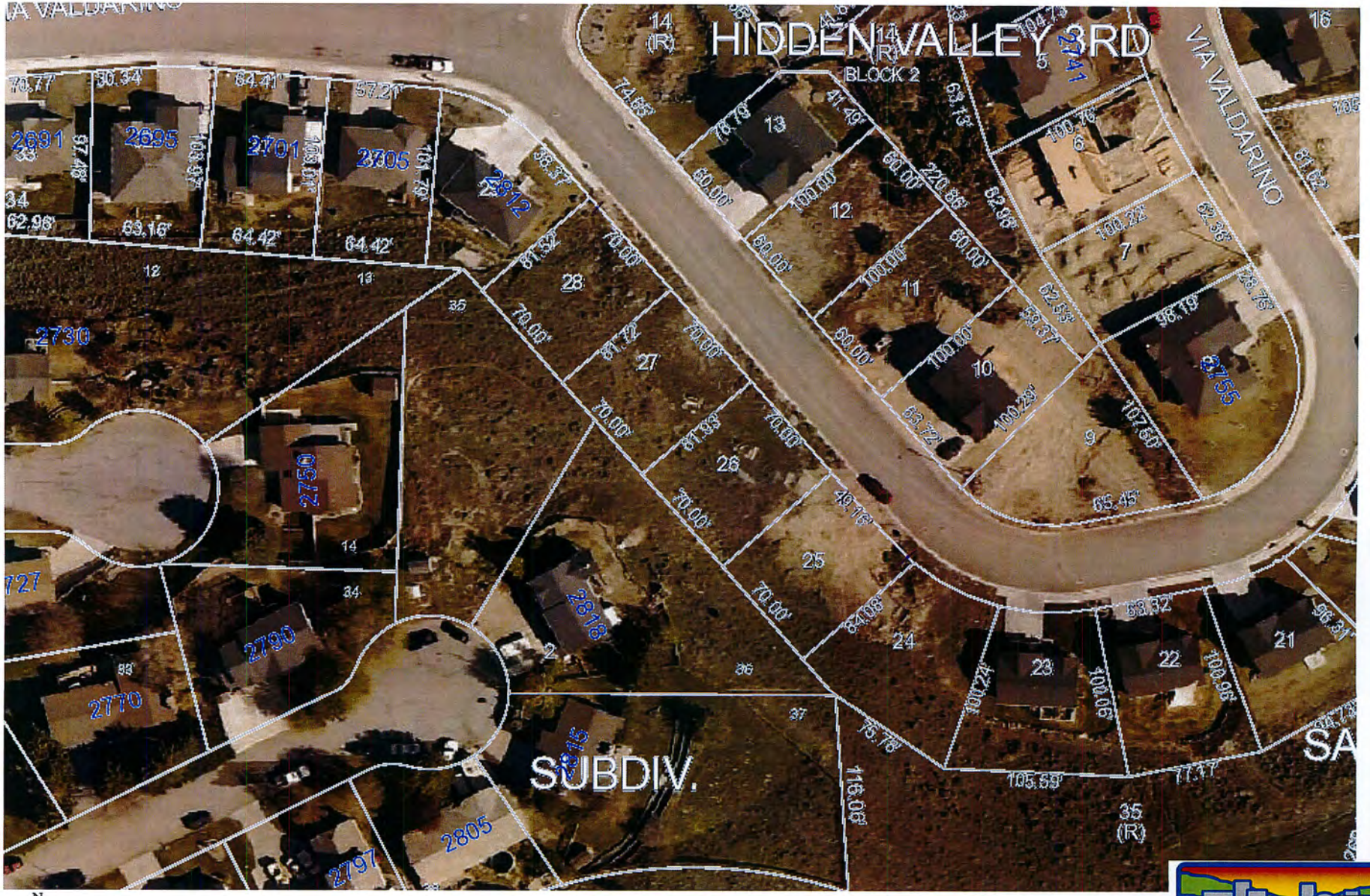
5. The variance does not adversely impact adjacent property owners - It does not increase density - The driveway lengths and width is the same as any lot with standard setback and longer. The footprint of the homes is smaller than adjacent homes and will result in more yard area and greater distance between the homes creating a more spacious setting. Minimizing the cuts into the hill will positively impact adjacent properties and the neighborhood.

6. It will not effect health safety or welfare of public. The driveway will not be shortened. There is not an increase in density.


GRAPHIC SCALE
1 INCH = 20 FEET
20 0 10 20
LOT 24
BUILDING FF = 4914.00
4925.00 BW
4931.00 TW / HIGH POINT
PATIO = 4925.00
4925.00 BW
4914.00 FG
4914.00 FG
4911.89 FG
4909.90 FG
4912.00 BW
4912.00 TW
4911.00 TW
4908.40 BW
15.0' SETBACK
LOT 25
BUILDING FF = 4905.75
4914.75 BW
4918.00 TW / HIGH POINT
4914.75 BW
PATIO = 4914.75
4905.75 FG
4905.75 FG
4903.52 FG
4902.00 FG
15.0' SETBACK
LOT 26
BUILDING FF = 4899.00
4911.00 TW / HIGH POINT
4908.00 BW
4908.00 BW
PATIO = 4908.00
4899.00 FG
4898.00 FG
4896.95 FG
4895.22 FG
15.0' SETBACK
LOT 27
BUILDING FF = 4892.45
4906.45 TW / HIGH POINT
4901.45 BW
4901.45 BW
PATIO = 4901.45
4892.45 FG
4892.45 FG
4890.29 FG
4888.61 FG
15.0' SETBACK
LOT 28
BUILDING FF = 4885.60
4896.60 TW / HIGH POINT
4894.60 BW
4894.60 BW
PATIO = 4894.60
4885.60 FG
4885.60 FG
4883.44 FG
4881.73 FG
15.0' SETBACK
VIA VALDARNO
LOTS 24-28 BLOCK 1 - HIDDEN VALLEY SUBDIVISION 3RD ADDITION - OPTION #1



LOTS 24-28 BLOCK 1 - HIDDEN VALLEY SUBDIVISION 3RD ADDITION - OPTION #2



City of Pocatello Web Map

6/30/2016

30m
100ft

590836.511 441810.328 Scale 1:827

Pocatello
A MUNICIPAL CORPORATION OF IDAHO

The City of Pocatello does not Guarantee the information contained In this map to be an accurate Representation of actual existing Conditions

Attachment B